



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 5529-99  
18 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 10 March 1971 for four years at age 18. The record reflects that you participated as a member of a task group in the contiguous waters of Vietnam on 26 October, 12 December 1971, and on 6-7 January 1972.

The record further reflects that you served for more than nine months without incident. However, during the 18 month period from December 1971 to June 1973 you received six nonjudicial punishments (NJP) and were convicted by a special court-martial. Your offenses consisted of four brief periods of unauthorized absence (UA), sleeping in a vehicle during working hours, stealing two tape players belonging to two other Marines, and failure to go to your appointed place of duty.

On 6 June 1973 you submitted a requested for an undesirable discharge for the good of the service in lieu of trial by court-martial for failure to go to your appointed place of duty, two specifications of disobedience, disrespect, three specifications of being improperly dressed or unshaven, and leaving your post before being relieved. On 13 June 1973, you submitted a second request for discharge for the good of the service to escape trial by court-martial for three periods of UA totalling about 22 days, from 5-6 March, 6-7 March, and 9-29 March 1973. Prior to submitting these requests you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. A staff judge advocate reviewed the requests and found them both to be sufficient in law and fact. The discharge authority approved both requests and directed an undesirable discharge. You were so discharged on 8 September 1973.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, Vietnam service, and the fact that it has been more than 26 years since you were discharged. The Board noted your contention that you received only one disciplinary action during your period of service. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your record of six NJPs, a special court-martial conviction, and the fact that you accepted discharge rather than face trial by court-martial for numerous offenses. In view of the foregoing, your contention appears to be without merit. The Board believed that considerable clemency was extended to you when the requests for discharge to avoid trial by court-martial were approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your requests for discharge were granted and you should not be permitted to change them now. The Board concluded that the discharge was proper and no change it warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director